IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

WEB TELEPHONY, LLC Plaintiffs, v. VERIZON COMMUNICATIONS, INC. et al. Defendants.	§	
VONAGE HOLDINGS CORP. and VONAGE AMERICA, INC., Counterclaim-Plaintiffs, v. WEB TELEPHONY, LLC Counterclaim-Defendant.	§	Civil File No. 2-07CV-085DF

VONAGE DEFENDANTS' ANSWER AND COUNTERCLAIMS AND JURY DEMAND

Defendants Vonage Holdings Corp. and Vonage America, Inc. (collectively "Vonage" or "defendants") answer the numbered paragraphs in the Complaint, as follows:

1. Vonage lacks sufficient knowledge and information to admit or deny the first sentence of paragraph 1, and therefore denies the same. Vonage denies the remaining allegations of paragraph 1 with respect to Vonage. Vonage lacks sufficient knowledge and information to admit or deny the remaining allegations of paragraph 1 that pertain to the other defendants, and therefore denies the same.

Dockets.Justia.com

2. Vonage admits that plaintiff has asserted this action based on Title 35 of the United States Code §§ 271 and 281, *et. seq.* and that this Court has subject matter jurisdiction for this subject matter.

3. Vonage admits that it conducts business in this Judicial District. Vonage denies the remaining allegations of paragraph 3.

4. Vonage lacks sufficient knowledge and information to admit or deny the allegations of paragraph 4, and therefore denies the same.

5. Vonage admits U.S. Patent No. 6,445,694 (the "'694 patent") was issued by the United States Patent & Trademark Office on September 3, 2002. Vonage admits U.S. Patent No. 6,785,266 (the "'266 patent") was issued by the United States Patent & Trademark Office on August 31, 2004. Vonage lacks sufficient knowledge and information to admit or deny the remaining allegations of paragraph 5, and therefore denies the same.

6. Vonage lacks sufficient knowledge and information to admit or deny the allegations of paragraph 6, and therefore denies the same.

7. Vonage lacks sufficient knowledge and information to admit or deny the allegations of paragraph 7, and therefore denies the same.

8. Vonage lacks sufficient knowledge and information to admit or deny the allegations of paragraph 8, and therefore denies the same.

9. Vonage lacks sufficient knowledge and information to admit or deny the allegations of paragraph 9, and therefore denies the same.

10. Vonage lacks sufficient knowledge and information to admit or deny the allegations of paragraph 10, and therefore denies the same.

11. Admitted.

12. Admitted.

13. Vonage responds to paragraph 13 for the same reasons set forth above with respect to paragraphs 1-12.

14. Denied.

15. Vonage lacks sufficient knowledge and information to admit or deny the allegations of paragraph 15, and therefore denies the same.

16. Denied with respect to Vonage. Vonage lacks sufficient knowledge and information to admit or deny the allegations of paragraph 16 that pertain to the other defendants, and therefore denies the same.

17. Denied with respect to Vonage. Vonage lacks sufficient knowledge and information to admit or deny the allegations of paragraph 17 that pertain to the other defendants, and therefore denies the same.

18. Denied with respect to Vonage. Vonage lacks sufficient knowledge and information to admit or deny the allegations of paragraph 18 that pertain to the other defendants, and therefore denies the same.

19. Vonage responds to paragraph 19 for the same reasons set forth above with respect to paragraphs 1-12.

20. Denied.

21. Vonage lacks sufficient knowledge and information to admit or deny the allegations of paragraph 21, and therefore denies the same.

22. Denied with respect to Vonage. Vonage lacks sufficient knowledge and information to admit or deny the allegations of paragraph 22 that pertain to the other defendants, and therefore denies the same.

23. Denied with respect to Vonage. Vonage lacks sufficient knowledge and information to admit or deny the allegations of paragraph 23 that pertain to the other defendants, and therefore denies the same.

24. Denied with respect to Vonage. Vonage lacks sufficient knowledge and information to admit or deny the allegations of paragraph 24 that pertain to the other defendants, and therefore denies the same.

25. Vonage acknowledges plaintiff demands trial by jury of all issues so triable.

26. Vonage acknowledges plaintiff's prayer for relief, and denies plaintiff is entitled to such relief with respect to Vonage.

FIRST AFFIRMATIVE DEFENSE

27. The '694 patent is invalid, void and unenforceable for failure to comply with one or more provisions of the United States Code, including Sections 102, 103 and 112 in Title 35, and/or the Rules and Regulations of the U.S. Patent & Trademark Office set forth in Title 37, C.F.R.

28. The '266 patent is invalid, void and unenforceable for failure to comply with one or more provisions of the United States Code, including Sections 102, 103 and 112 in Title 35, and/or the Rules and Regulations of the U.S. Patent & Trademark Office set forth in Title 37, C.F.R.

SECOND AFFIRMATIVE DEFENSE

29. Vonage has not infringed any valid claim of the '694 patent, nor the '266 patent (collectively "the patents in suit").

30. Vonage has not induced or contributed to the infringement of any valid claim of the patents in suit by another.

THIRD AFFIRMATIVE DEFENSE

31. The Complaint is barred by latches, estoppel, and/or implied license.

FOURTH AFFIRMATIVE DEFENSE

32. On information and belief, the Complaint and demand for relief are barred, in whole or in part, by 35 U.S.C. § 287.

ADDITIONAL DEFENSES

33. As Vonage's investigation is ongoing and discovery has not yet been taken, Vonage is without sufficient information regarding the existence or non-existence of other facts or acts that would constitute a defense to plaintiff's claims of patent infringement or that would establish the invalidity or unenforceability of the claims of the patents in suit, including additional prior art or related patents. Vonage accordingly gives notice that it may assert facts or acts which tend to establish non-infringement, invalidity, unenforceability, or which otherwise constitute a defense under Title 35 of the United States Code.

COUNTERCLAIMS

34. Defendants/Counterclaim Plaintiffs Vonage Holdings Corp. and Vonage America, Inc. (collectively "Vonage"), bring the following Counterclaims against Plaintiff Web Telephony, LLC ("Web Telephony"):

THE PARTIES

35. Counterclaim-Plaintiffs Vonage Holdings Corp. and Vonage America, Inc. are Delaware corporations with a principal place of business located at 23 Main Street, Holmdel, New Jersey 07733.

36. Counterclaim-Defendant Web Telephony, on information and belief, is an Illinois corporation.

JURISDICTION AND VENUE

37. The Court has jurisdiction for this counterclaim for declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and under the laws of the United States concerning actions relating to patents under 28 U.S.C. § 1338(a).

38. A justiciable controversy has arisen and exists between Vonage and Web Telephony concerning the validity, enforceability and scope of the patents in suit and Vonage's liability for alleged infringement thereof. Venue properly lies in this judicial district by virtue of Plaintiffs having filed their Complaint herein.

COUNT I: NON-INFRINGEMENT OF THE '694 PATENT

39. Vonage incorporates the allegations of paragraphs 1-38 as if fully set forth herein.

40. Web Telephony has alleged and claimed that Vonage infringes the '694 patent.

41. Vonage does not infringe any valid claim of the '694 patent and has not induced or contributed to the infringement of any valid claim of the '694 patent by another.

42. Vonage is entitled to a judicial declaration that it does not infringe the ‘694 patent.

COUNT II: NON-INFRINGEMENT OF THE ‘266 PATENT

43. Vonage incorporates the allegations of paragraphs 1-38 as if fully set forth herein.

44. Web Telephony has alleged and claimed that Vonage infringes the ‘266 patent.

45. Vonage does not infringe any valid claim of the ‘266 patent and has not induced or contributed to the infringement of any valid claim of the ‘266 patent by another.

46. Vonage is entitled to a judicial declaration that it does not infringe the ‘266 patent.

COUNT III: INVALIDITY OF THE ‘694 PATENT

47. Vonage incorporates the allegations of paragraphs 1-38 as if fully set forth herein.

48. Web Telephony has alleged and claimed that it owns the ‘694 patent.

49. Web Telephony has alleged that the ‘694 patent was duly and legally issued.

50. On information and belief, the ‘694 patent is invalid for failure to meet the conditions of patentability set forth in 35 U.S.C. § 102, § 103, and/or § 112.

51. Vonage is entitled to a judicial declaration that the ‘694 patent is invalid.

COUNT IV: INVALIDITY OF THE ‘266 PATENT

52. Vonage incorporates the allegations of paragraphs 1-38 as if fully set forth herein.

53. Web Telephony has alleged and claimed that it owns the ‘266 patent.

54. Web Telephony has alleged that the ‘266 patent was duly and legally issued.

55. On information and belief, the ‘266 patent is invalid for failure to meet the conditions of patentability set forth in 35 U.S.C. § 102, § 103, and/or § 112.

56. Vonage is entitled to a judicial declaration that the ‘266 patent is invalid.

COUNT V: UNENFORCEABILITY OF THE ‘694 & ‘266 PATENTS

57. Vonage incorporates the allegations of paragraphs 1-56 as if fully set forth herein.

58. Web Telephony has alleged and claimed that it owns the patents in suit.

59. Web Telephony has alleged that the patents in suit were duly and legally issued.

60. On information and belief, the patents in suit are unenforceable for one or more of the grounds alleged in paragraphs 1-56 of this answer.

61. Vonage is entitled to a judicial declaration that the patents in suit are unenforceable.

JURY DEMAND

In accordance with Fed. R. Civ. P. 38(b), Vonage hereby demands a trial by jury on all issues so triable.

WHEREFORE, Vonage prays for the following relief:

A. That the Complaint be dismissed with prejudice;

B. That the ‘694 patent be declared invalid, void and/or unenforceable;

C. That the ‘266 patent be declared invalid, void and/or unenforceable;

D. That Vonage be declared not to have infringed the ‘694 patent;

E. That Vonage be declared not to have infringed the ‘266 patent;

F. That Vonage be found not to have violated any other rights of plaintiff;

G. That the Court declare this to be an exceptional case under 35 U.S.C. § 285 and award Vonage its costs and expenses including reasonable attorney fees; and

H. That Vonage be awarded such other and further relief which the Court may deem just or proper under the circumstances.

Date: April 9, 2007

Respectfully Submitted,

By: /s/ Jeffrey J. Cox

Jeffrey J. Cox - Lead Counsel
Texas State Bar No. 04947530
jcox@hdbdk.com
Isaac D. Leventon
Texas State Bar No. 24050924
ileventon@hdbdk.com
HARTLINE, DACUS, BARGER,
DREYER & KERN LLP
6688 North Central Expressway
Suite 1000
Dallas, Texas 75206
Phone: (214) 369-2100
Fax: (214) 369-2118

AND

Scott W. Doyle*
Seth A. Watkins*
Daniel L. Girdwood*
Steven J. Barber*
Jose R. Gonzalez-Magaz*
STEPTOE & JOHNSON LLP
1330 Connecticut Ave., NW
Washington, DC 20036-1795
Phone: (202) 429-3000
Fax: (202) 429-3902

Counsel for VONAGE HOLDINGS CORP. and VONAGE AMERICA, INC.

* Counsel seeking admission *pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of April, 2007, a true and correct copy of VONAGE DEFENDANTS ANSWER AND COUNTERCLAIMS AND JURY DEMAND were mailed first class, postage prepaid, and sent via email to all counsel of record.

/s/ Jeffrey J. Cox
Jeffrey J. Cox